

Formation Of the Commissioner Judge Institution as A Court Supervision Policy (Judicial Scrutiny) Indonesian Criminal Justice System

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Abstract

The idea of the concept of commissioner judges as Preliminary Examination Judge Institutions is the influence of the development of the times, as well as the ratification of the International Covenant on Civil and Political Rights by Indonesia, so that protection of the rights of suspects/defendants becomes the country's main priority in efforts to enforce the law through law enforcement officers. The fundamental function of Criminal Procedure Law is to seek material truth, so it is felt that the Preliminary Examination Judge as a new institution that emerged in the Criminal Procedure Code Bill is a new breakthrough to maintain the Due Process of Law so that it can continue to run according to expectations. It is also hoped that in the future there will be no innocent people who are sentenced without ignoring the interests of the victim. This scientific writing uses the Sociological Legal Research method (socio legal research).

Keywords: commissioned judge institution, court supervision (judicial scrutiny), criminal justice system.

INTRODUCTION

Criminal justice practices often involve coercive measures by law enforcement, such as arrest, detention, search, seizure, and wiretapping. In order not to violate the civil rights and liberties of individuals, it is important that the implementation of coercive measures is subject to judicial scrutiny. This approach allows commissioner judges (Rechter Commissaries) to play a crucial role in deciding and determining various authorities. The Draft Criminal Procedure Code (RUU KITAB UNDANG-UNDANG HUKUM ACARA PIDANA) has included various authorities of the Commissioner Judge, including determining whether or not an arrest, detention, search, seizure, or wiretapping is legal. In addition, it also decides on the cancellation or suspension of detention; assesses statements that violate the rights of suspects or defendants not to incriminate themselves; determines that evidence or statements obtained illegally cannot be used as evidence; regulates compensation or rehabilitation for those arrested or detained illegally, as well as compensation for property rights that are illegally confiscated.

The application of judicial scrutiny through the Commissioner Judge represents a significant solution to addressing issues related to the deprivation of individual freedom within the Indonesian criminal justice system. This mechanism provides a layer of judicial oversight, ensuring that actions such as arrests, detentions, and other restrictions on personal liberty are conducted lawfully and fairly. The concept of judicial scrutiny forms the

foundation of the pretrial system in Indonesia, serving as a critical safeguard against potential abuses of power. By allowing judicial review of procedural actions, this approach strengthens the protection of individual rights while promoting accountability within law enforcement and prosecutorial practices. The roots of judicial scrutiny can be traced back to the historic Magna Carta Charter of June 15, 1215, in England, which marked a pivotal moment in limiting absolute monarchy. This landmark document established that even the king was subject to the law, ensuring that no individual, regardless of their authority, could act above legal principles. The Magna Carta introduced the idea that the deprivation of liberty must be subject to judicial review, a concept that has evolved and been adopted in various legal systems worldwide. In Indonesia, the implementation of judicial scrutiny through the Commissioner Judge reflects this enduring principle, adapting it to modern legal frameworks to uphold justice and the rule of law.

METHOD

This scientific writing adopts the Sociological Legal Research method, commonly known as socio-legal research, which is a multidisciplinary approach that examines the interplay between law and society. Unlike traditional legal research that focuses solely on the analysis of legal texts, precedents, and doctrines, sociological legal research delves into the practical application and societal implications of legal norms. Central to this method is the concept of law as a norm or rule binding directives established by recognized authorities to guide behavior within a society. It aligns with the positivist perspective, which emphasizes the study of law as it exists, rather than exploring its moral or ethical dimensions. By investigating how laws are created, implemented, and experienced, this approach reveals the dynamic relationship between legal frameworks and the social contexts in which they operate. Sociological legal research not only evaluates the effectiveness of laws in achieving their intended purposes but also highlights discrepancies between legal theory and practice, providing valuable insights for policymakers, practitioners, and scholars to address societal challenges through a legal lens.

RESULT AND DISCUSSION

In the renewal of Indonesian criminal procedure law, the role of the Commissioner Judge introduces a dual approach to judicial oversight, encompassing both passive and active functions. As a Passive Judge, the Commissioner Judge acts upon the formal request of the suspect or victim, addressing complaints or disputes related to procedural actions, with the legal outcome being a Decision. This role ensures that the court provides remedies when procedural violations or injustices are raised by the parties involved. On the other hand, as an Active Judge, the Commissioner Judge independently initiates oversight upon receiving copies of crucial legal documents, such as arrest warrants, detention orders, confiscation orders, or notifications of terminated investigations or prosecutions that deviate from the principle of opportunity. In such instances, the Commissioner Judge issues a legal product in the form of a Determination, reflecting a proactive judicial review to safeguard legality and justice. This dual role enhances the balance between reactive judicial intervention and proactive oversight, strengthening accountability and fairness within the criminal justice system.

One of the unique things about the difference between a Commissioner Judge and a Pretrial Judge, apart from their authority, is the judge. The judge in a pre-trial hearing is a judge who is still attached to the district court, whereas, Judges in the Commissioner Judge are judges who are independent of the district court and are permanent. This means that a district court judge who is appointed as a Commissioner Judge will release his gavel while

-serving as a Commissioner Judge for a period of 2 (two) years. After passing the period of 2 (two) years, will return to the district court from which he came and become a gavel judge again.

The duties and authorities of the Commissioner Judge are carried out with a request from the suspect, defendant, family, or their attorney. Unlike pretrial motions which can be dropped if the main case examination has begun in the District Court, the right to use the Commissioner Judge procedure is not limited to interested parties. I am very sure that the concept of judicial scrutiny through the Commissioner Judge in the Draft Criminal Procedure Code is an oasis in the midst of the aridity of the current Indonesian criminal justice system, and is much better than the current system, such as pretrial motions in the Criminal Procedure Code.

The Commissioner Judge is a milestone for the protection of Human Rights, which is currently often ignored. This is also supported by the statement and research from ICJR, which states that the Commissioner Judge in the Draft Criminal Procedure Code could be a step forward for the protection of Human Rights, so that it can overcome the tendency for abuse of authority by law enforcement officers, especially Police Investigators. The application of judicial scrutiny through the Commissioner Judge is important to overcome human rights violations, especially related to the increasing practice of torture in Indonesia. By giving the Commissioner Judge the authority to conduct supervision at the early stages of the investigation, this can strengthen the protection of individual rights that are threatened by the excessive power of the Police Investigator.

The government has the primary responsibility as a duty bearer in enforcing Human Rights, namely in terms of respecting, protecting, and fulfilling Human Rights for all citizens and individuals within its jurisdiction. This includes the obligation to prevent, investigate, punish, and compensate victims of Human Rights violations, including cases of torture in detention cells carried out by law enforcement officers, such as Police Investigators. It is often found that suspects are tortured by Police Investigators as if they were not human, even though they still have Human Rights, including freedom from torture, which has been guaranteed by various legal instruments, both at the international and national levels. Moreover, freedom from torture is a Human Right that cannot be reduced under any circumstances (non-draggable right).

This has also been expressly mandated in Article 28I paragraph (1) and Article 28G paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and is also clearly stated in various national laws, including Law Number 5 of 1998 concerning Ratification of the Convention Against Torture, Law Number 39 of 1999 concerning Human Rights, Law Number 26 of 2000 concerning the Human Rights Court, and Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights. It is clear that the importance of enforcing Human Rights in Indonesia cannot be doubted, given the increasing prevalence of torture cases by law enforcement officers, especially Police Investigators. Enforcement of Human Rights is a crucial foundation in ensuring that individual rights are protected, and perpetrators of Human Rights violations are punished in accordance with the law. However, the reality on the ground shows that the implementation and enforcement of the law against Human Rights violations, including cases of torture by security forces, still require significant improvement. Various initiatives, such as judicial scrutiny through the Commissioner Judge in the Draft Criminal Procedure Code, are steps that are expected to overcome the weaknesses of the current system. The inclusion of commissioner judges as a new institution in the Draft Criminal Procedure Code certainly has the hope of producing higher quality investigations and prosecutions so that the trial process can run according to the general principles in procedural law which adhere to the principles

of speed, simplicity and low cost and not the opposite.

CONCLUSION

The Commissioner Judge has the authority to conduct supervision at the early stages of the investigation, including assessing the legality of actions, such as arrest, detention, and confiscation. This is crucial in ensuring that these actions do not violate individual rights guaranteed by the Constitution and international law. Thus, the implementation of judicial scrutiny through the Commissioner Judge is one of the concrete steps in strengthening the enforcement of human rights in Indonesia. The Commissioner Judge appears to be better than pretrial because it has broader and more complete duties and authorities regarding coercive measures when compared to the Criminal Procedure Code. However, there are several things that need to be improved, such as the duration of the Commissioner Judge's implementation which is only two days so that it can only rely on the completeness of formal files without seeking material truth, and the Commissioner Judge's decision which is final and therefore prone to misuse. The Commissioner Judge has a different concept from the Magistrate in the United States, the Procureur and Judged Instruction in France, or the Rechter Commissaries in the Netherlands. The Commissioner Judge does not use probable cause and reasonableness as reasons for detaining someone. In addition, the Commissioner Judge also does not have the authority to assess whether the determination of a suspect is valid or not, as is the authority of the pre-trial judge.

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